

STATE OF MICHIGAN
COURT OF APPEALS

FRED ARTHUR PETERSON,

Plaintiff-Appellant,

v

DAVID JESS CORDER, LANGLOIS STORES,
INC., and RYDER TRUCK RENTAL, INC.,

Defendants-Appellees.

UNPUBLISHED

February 1, 2005

No. 251127

Mason Circuit Court

LC No. 02-000316-NI

Before: Zahra, P.J., and Neff and Cooper, JJ.

MEMORANDUM.

Plaintiff Fred Arthur Peterson appeals as of right the trial court's order granting defendants David Jess Corder, Langlois Stores, Inc. and Ryder Truck Rental, Inc.'s motion for summary disposition. This case arises out of a traffic accident involving plaintiff's motorcycle and a truck driven by Mr. Corder. We affirm. This case is being decided without oral argument under MCR 7.14(E).

Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10). Because the court looked beyond the pleadings in deciding the motion, we will treat it as having been granted under MCR 2.116(C)(10). *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). This Court reviews a trial court's determination regarding a motion for summary disposition de novo. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999). "In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in [the] light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists." *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001). Summary disposition is appropriate only if there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001).

Plaintiff argues that there exists a genuine issue of material fact that Mr. Corder violated his duty under MCL 257.648(1) to ensure that he could safely complete his left-hand turn before attempting it.¹ We disagree. The record establishes that plaintiff was at fault for the accident and that Mr. Corder could not have anticipated plaintiff's actions. At the time of the accident, plaintiff turned into an oncoming lane of traffic and attempted to pass Mr. Corder who was making a left-hand turn. Mr. Corder had no responsibility to see and anticipate plaintiff's illegal, and unusual, approach from behind. See *Placek v Sterling Heights*, 405 Mich 638, 668-670; 275 NW2d 511 (1979); *Kubasinski v Johnson*, 46 Mich App 287; 208 NW2d 74 (1973) (observing that "[i]t is almost axiomatic that a party need not anticipate a negligent or unlawful act on the part of another"). Further, Mr. Corder fulfilled his duty to ensure that the turn could be made safely by activating his turn signal, decreasing his speed and checking his mirrors. Accordingly, the trial court properly determined that Mr. Corder had not breached any duty and granted defendant's motion for summary disposition.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Jessica R. Cooper

¹ Pursuant to MCL 257.648(1), "The driver of a vehicle or bicycle upon a highway, before stopping or turning from a direct line, shall first see that the stopping or turning can be made in safety and shall give a signal as required in this section."